IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 24482 of 2004

Between:

P.R.S.M. National Junior College, rep. by its Principal, Vijayawada, Krishna District.

..... PETITIONER

AND

1 The Board of Intermediate Education,

Andhra Pradesh, Nampally, Hyderabad
rep. by its Secretary.

2 The Regional Inspecting Officer,

Board of Intermediate Education
Machavaram, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus declaring as illegal and arbitrary the action of the Respondents in not receiving ICR Forms 2004-05 of Junior Intermediate Section to the Petitioner College even though the same were tendered to the Petitioner on payment of necessary fee and charges and issue a consequential direction to the Respondents to receive and process ICR Forms 2004-05 of Junior Intermediate Section of the Petitioner college to enable the junior section of Intermediate to take the 1st Year Intermediate Examination to be conducted in March 2005 and pass such other order or orders.

Counsel for the Petitioner: MR.D.V.SITHARAM MURTHY

Counsel for the Respondents: MR.S.S.PRASAD

The Court made the following :

ORDER:

Petitioner, which is a junior college with two sections i.e. one is arts and one is science, filed this petition through its Principal for a direction to the respondents to permit its students to appear for the 2005 Intermediate Examinations to be held in this month. Its case, in brief of the petitioner, is that, though its affiliation to the University was being extended periodically upto 2002-03, and though it had produced number of meritorious students and received commendation, as the second best private aided junior college in Krishna District, after it completed its admission for 2002-03, as per the Circular dated 09-06-2002 issued by the first respondent (hereinafter referred to as "the Board"), the Regional Joint Director of Intermediate Education issued proceedings deputing its junior lecturers to other colleges on the ground of fall in work load, to be brought back to their parent institution as and when there is sufficient work load, and also issued proceedings shifting its students to SRR & CVR Government Junior College, Vijayawada, and transferring its non-teaching staff to three Government Junior Colleges. So it filed W.P.No.71 of 2003 questioning those proceedings which was allowed, granting liberty to the respondents to take action against it, after affording an opportunity of being heard. Thereafter, a show cause notice as to why the teaching and non-teaching staff, should not be shifted to other needy colleges, was issued to it for which it sent a detailed explanation. Without considering the reply and without assigning any reasons, proceedings were issued relieving its teaching and the non-teaching staff, allotting them to other colleges. Therefore, it filed W.P.No.7223 of 2001 questioning those proceedings. After interim stay was vacated and the appeal against an injunction order was dismissed, it relieved the teaching and non-teaching staff. In the meanwhile, since a Special officer was appointed, it filed W.P.No.8951 of 2004 questioning the appointment of the Special Officer, which was dismissed with a direction to pursue the statutory

remedy of appeal. In the meanwhile, in order to comply with the undertaking given to the Government, it after complying with the formalities, shifted the college into a building of its own, constructed in 10 acres of land purchased in 1992. It is running the college with part time staff and sent the nominal rolls of senior intermediate students, alongwith the examination fee, and had submitted application for issuance of ICR Forms in respect of junior intermediate students to the Board. It was directed to submit them after filling in the names etc. of the students and examination fees. Though it paid the fees of students, ICR Forms of junior intermediate students were duly filled in are not being accepted. Hence the writ petition.

2. Secretary of the Board, filed his counter affidavit on behalf of respondents. Case of respondents, in brief, is since appointment of Sri G.Ch.B.Peddanna, (who swore to the affidavit filed in support of this petition), as Principal was not made as per the procedure, his appointment as Principal was not approved by the Board, and so petitioner is not entitled to any relief on the basis of the affidavit sworn to by Sri G.Ch.B.Peddanna. Petitioner college was shifted to different places in violation of G.O.Ms.No.29, Education (Rules) dated 05-02-1987 in ten different spells, attracting a penalty of Rs.10,00,000/- at Rs.1,00,000/- for each unauthorized shifting. As affiliation for the academic year 2003-2004 of the petitioner was not extended, for want of registered lease deed and approved building plan, it cannot admit students in Junior/Senior Intermediate course for the academic year 2003-2004. As per the information furnished by the Enquiry Officer, the student strength of the petitioner college for the academic year 2002-03 was not 49 students in Arts section and 86 students in Science section, as alleged since the Correspondent of the petitioner college was removed, as per Section 24(3) of the Andhra Pradesh Education, 1982 and since the District Vocational Educational Officer, Eluru, was appointed Special Officer petitioner has no right to make admissions and so, the petition is liable to be dismissed.

3. The main contention of the learned counsel for the petitioner is that since one of the specific conditions imposed at the time of granting affiliation to the petitioner is that it should shift the college into a premises of its own, shifting the petitioner college to a premises of its own premises is not, and cannot be

said to be, an unauthorized shifting and so, the fact that petitioner college was shifted into its own premises, from the leased premises, is not and cannot be a ground for refusal to receive the ICR Forms of students. It is his contention that since the Secretary of the Board informed petitioner that Commissioner and Director of Intermediate Education, Hyderabad, deals with the shifting of aided Junior Colleges, and that it has to submit its application to the Commissioner, petitioner addressed a letter dated 10-12-2004 to the Commissioner and so, it cannot be said that the petitioner did not comply with the Rules. It is also his contention that since appointment of a Special Officer *per se* is not a ground for rejecting the ICR Forms, which have to be submitted by the Principal, the fact that a Special officer is appointed to the petitioner is not of any consequence. It is also his contention that if, at this stage, ICR forms are not received, future of the students studying in the petitioner College would be at stake, and so, necessary directions may be given to the respondents to receive the ICR Forms and permit the students to appear for the examination by ordering issuance of hall tickets. The contention of the learned Standing Counsel for the first respondent-Board is that since Sri G.Ch.B.Peddanna, who swore to the affidavit filed in support of this petition, is not the recognized Principal and is continuing in office unauthorisedly, in violation of the orders passed by the Board, this petition, supported by such affidavit is not maintainable. It is also his contention that since as per G.O.Ms.No.29, Education (Rules) dated 05-02-1987, prior permission of Government for shifting of the college is necessary, and since there is no prior permission of the Government to shift the petitioner college into the place in which it is running now, (which is at a distance of more than 20 kilometers from its earlier place) admittedly was obtained, and since the Regional Inspection Officer of the Board, addressed letters, by registered post, to the parents of all the students, studying in the petitioner college, informing them that since affiliation of the petitioner is withdrawn they can approach the Principal, Government Junior College, Mylavaram, which was accorded permission for fresh admissions, on any working day between 16-11-2004 to 20-11-2004 along with the T.C., study certificate, S.S.C. certificate and two passport size photographs. If such opportunity is not availed of, neither the petitioner nor the students studying therein have a cause of action to move this court.

4. Petitioner was directed to shift to its own premises about 10 years earlier. It

admittedly, did not comply with direction for more than ten years. Shifting of the college at its own will and pleasure, that too without following procedure prescribed, cannot be said to be shifting 'in compliance with the directions' given to shift. Petitioner obviously shifted to its new premises after the affiliation was not extended for want of registered lease deed and approved building plan. Even when it wanted to shift to its own premises, in compliance with the direction issued earlier, since Rule 14(3), mandates prior permission of the Government for shifting, petitioner ought to have obtained prior permission from the Government before shifting to the new premises. Having not done so it cannot take shelter under the earlier direction issued to it. It also cannot claim ignorance of Rule 14(3) framed in G.O.Ms.No.29 which thus reads:

> "Any unauthorized shifting of the institution shall render lapse of the permission/recognition/affiliation granted to the institution automatically, without any further notice or orders."

and cannot take shelter under the letter-dated 05-10-2004, written by the Secretary of the Board informing that as shifting of aided Junior Colleges would be dealt with by the Commissioner and Director of Intermediate Education, Hyderabad, it has to route its application to the Government through Commissioner and Director of Intermediate Education. Since there, admittedly, is no prior permission from the Government to shift, in view of Rule 14(3) of G.O.Ms.No.29 extracted above, consequence is automatic and so respondents not receiving the ICR Forms submitted by petitioner cannot be said to be erroneous.

5. I am unable to agree with the contention of the learned counsel for the petitioner that future of the students studying in petitioner college would be in jeopardy, if permission is not granted, because, from the material papers produced by the respondents along with the counter-affidavit, it is seen that the parents of the thirty students were served with registered letters intimating them that their wards can be joined in another college. Inspite of such notice, if parents of the students did not take action and chose to continue their children/wards in the petitioner College, which, to their knowledge is not a

recognized institution, they should have done so at their peril.

6. The fact that petitioner addressed a letter, dated 10-12-2004, to the Commissioner, requesting permission to shift, is of no consequence because the said application was made after shifting, but not before shifting of the petitioner college.

7. The Board, in its letter Rc.No.854/E1-1/99, dated 26-10-1999, intimated that appointment of the G.Ch.B.Peddanna (who swore to the affidavit filed in support of his petition) as Principal of the petitioner College was not approved by the Board, as his appointment was not made as per the procedure laid down by the Government/Board and, consequently the correspondent of the petitioner college was requested to dispense with his services forthwith. But the management of the petitioner college chose to continue the service of a Principal, whose appointment is not recognized by the Board. So, even assuming that it is the Principal, but not the management, that has to submit the applications of the students to the Board, since appointment of Sri G.Ch.B.Peddanna, S/o.Kanakaiah, is not recognized by the Board, presentation of the applications of the students by such unrecognized Principal, cannot be taken as valid presentation of the applications to the Board.

8. For all the above reasons, I hold that the petitioner is not entitled to any relief and so no direction to the respondents to receive the applications of the students and to issue Hall tickets can be granted.

9. Accordingly, the writ petition is dismissed. No costs.

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03-03-2005

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Prv

To

1 The Secretary, Board of Intermediate Education,

Andhra Pradesh, Nampally, Hyderabad

2 The Regional Inspecting Officer,

Board of Intermediate Education
Machavaram, Vijayawada.

3 2 CD copies

4 1 CC to Kum.Sindhu Kumari

5 1 CC to Mr.Sitaramamurthy